

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 19949 OF 2002

DATED: 10.8.2006

Between:

Palakurthi Adinarayana and others

... Petitioners

and

The State of A.P. rep.by Secretary, Revenue
Department and others.

... Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.19949 OF 2002

ORAL ORDER:

The writ petition was initially filed by the 1st petitioner, who having died on 12.12.2005 during the pendency of the writ petition, is represented by petitioners 2 to 10 herein, who have been impleaded as his LRs by the order of this court dated 10.08.2006 in W.P.M.P. No 9246 of 2006.

The 1st petitioner in substance seeks a direction to the respondents to initiate land acquisition proceeding in respect of his lands in an extent of Ac.9.63 cts in Sy.No. 63/1 of Jampina village, Madugula Mandal, Visakhapatnam District and for payment of compensation to him.

The 1st petitioner claims that he is the owner of his ancestral lands of Ac.10.18 cts in Sy.No. 63/1 of Jampina village. Ever since the death of his father Sanyasaiah, he is in peaceful and uninterrupted possession having inherited the property. Ac.0.75 cts, was acquired for formation of Vaddadi-Kinthali R&B Road and compensation paid to him. Thereafter he is in possession and enjoyment of the remaining extent of Ac.9.63 cts. The 1st petitioner states that the authorities of the Revenue Department, assuming the remaining part of the land as poramboke, allowed members of the weaker sections consisting of about 69 families to encroach on the land and later assigned the land in their favour and also granted certificates during 1997. The 1st

petitioner also alleges that the respondents have constructed a Panchayat Office building, a water tank and a Church, all without acquiring the land and depriving the petitioner of the legitimate compensation for acquisition of his land. The petitioner made representation on 11.7.1998 seeking compensation, whereupon the 4th respondent recorded the 1st petitioner's statement and that of his sons (petitioners 3 and 4 herein) in a memo dated 29.9.1998 and informed him that he had surveyed the land in question and had issued only possession certificates but had not granted any pattas. The petitioner also alleges that the 4th respondent in a communication dated 31.8.98 recommended to the 2nd respondent to initiate land acquisition proceedings and that despite several visits to the respondents neither acquisition proceedings were initiated nor any compensation paid.

The 3rd respondent has filed a counter affidavit clearly, unequivocally and categorically denying that the 1st petitioner is the owner of an extent of Ac.10.18 cts, in Sy.No.63/1 of Jampina village. It is also denied that Ac.0.75 cts, was earlier acquired by R& B Department and compensation paid. The answering respondent states that the village Jampina is an estate village in the erstwhile Madugula Estate situate in old Sy.No. 87. The estate was submerged in the cyclone during 1935-36 and the entire village population shifted to Sy.No. 63/1 during that year. Earlier the land in question was erroneously classified as Zeroyiti in the Settlement Accounts but now that record has been rectified. According to the answering respondent, the land is in possession of various other persons since 1935 continuously and without any hindrance. It is also asserted that the petitioner in LCC No. 135/75 Madugula, had filed a declaration under the AP Land Reforms (Ceiling On Agricultural Holdings) Act, 1973, but did not mention about his ownership or possession of either Ac.10.18

cts or Ac.9.63 cts, in Sy.No.63/1 Jampina village as constituting his holding. He merely declared the lands held by him in other village like Kukundapuram and Madugula. With a *mala fide* intention of claiming compensation from the State for a property not belonging to him, the writ petition is filed in abuse of the process of law, is the substance of the allegation in the counter affidavit of the 3rd respondent. If the petitioner is aggrieved by the illegal encroachment by some private persons on his lands, writ petition is not the remedy, is also a contention in the counter affidavit.

From the rival pleadings it is seen that there is a clear and unequivocal denial by the respondents of the writ claim that the lands in question belong to the petitioners. Such disputed question of fact ought not to be adjudicated under Art. 226 of the Constitution. If the petitioners desire to establish title to and possession of the lands in question for the purpose of claiming compensation for illegal dispossession by the State, their remedy is before the Civil Court of competent jurisdiction and not under Art. 226 of the Constitution.

For the aforesaid reasons the writ petition is dismissed. No order as to costs.

Date: 10.08.2006
PVSN/*TSNR

GODA RAGHURAM, J

